

## §§ 1726.1–1726.9

1726.404 Non-site specific construction contract closeout.

1726.405 Inventory of work orders (RUS Form 219).

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 60 FR 10155, Feb. 23, 1995, unless otherwise noted.

### Subpart A—General

#### §§ 1726.1–1726.9 [Reserved]

#### § 1726.10 Introduction.

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers. Unless prior written approval is received from RUS, borrowers are required to comply with RUS policies and procedures as a condition to RUS providing loans, loan guarantees, or reimbursement of general funds for the construction and improvement of electric facilities. Requirements relating to RUS approval of plans and specifications, duties and responsibilities of the engineer and architect, and engineering and architectural services contracts, are contained in other RUS regulations. The terms “RUS form”, “RUS standard form”, “RUS specification”, “and RUS bulletin” have the same meanings as the terms “REA form”, “REA standard form”, “REA specification”, “and REA bulletin”, respectively, unless otherwise noted.

#### § 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. RUS, as a secured lender, has a legitimate interest in accomplishing RUS’s programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

#### § 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric bor-

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rowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, the borrower must comply with the procedures required by this part. In the case of jointly owned projects, RUS will determine on a case by case basis the applicability of the requirements of this part.

#### § 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. RUS reserves the right, as a condition of providing loans, loan guarantees, or other assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator.

#### § 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

*Approval of proposed construction* means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate requirements of part 1794 of this chapter.

*Architect* means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

*Bona fide bid* means a bid which is submitted by a contractor on the borrower’s list of qualified bidders for the specific contract, prior to bid opening.

*“Buy American” certificate* means a certification that the contractor has complied with the “Buy American” requirement (see § 1726.15).

*Competitive procurement* means procurement of goods or services based on lowest evaluated bid for similar products or services when three or more bids are received.

*Construction unit* means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

*Contracting committee* means the committee consisting of three to five members representing the borrower’s management and board of directors and the engineer. The contracting committee represents the borrower during contract clarifying discussions or negotiations under informal competitive bidding or multiparty negotiation, respectively.

*Encumbrance* means the process of approval for advance of loans funds by RUS.

*Engineer* means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

*Equipment* means a major component of an electric system, e.g., a substation transformer, heat exchanger or a transmission structure.

*Force account construction* means construction performed by the borrower’s employees.

*Formal competitive bidding* means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

*Goods or services* means materials, equipment, or construction, or any combination thereof.

*Informal competitive bidding* means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying

discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

*Material* means miscellaneous hardware which is combined with equipment to form an electric system, e.g., poles, insulators, or conductors.

*Minor error or irregularity* means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are “minor” if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. A minor error or irregularity is not an exception for purposes of determining whether a bid is responsive.

*Minor modification or improvement* means a project where the cost is less than \$50,000, exclusive of the cost of owner furnished materials.

*Multiparty lump sum quotations* means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received. (See § 1726.205).

*Multiparty negotiation* means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower’s best interest (see § 1726.203).

*Multiparty unit price quotations* means the procurement of goods or services on a unit price basis, based on the lowest evaluated offering, when three or more offers are received (See § 1726.204).

*Net utility plant (NUP)* means Part C, Line 5 of RUS Form 7 for distribution borrowers or Section B, Line 5 of RUS Form 12a for power supply borrowers for the immediately preceding calendar year.

*Procurement method* means a procedure, including, but not limited to, those in subpart G of this part, that a borrower uses to obtain goods and services.

*Owner furnished materials* means materials or equipment or both supplied by the borrower for installation by the contractor.

*Responsive bid* means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

*RUS approval* means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given over the telephone followed by a confirming letter.

*Unit prices* means individual prices for specific construction units defined in accordance with RUS approved units specified in RUS standard contract forms.

**§ 1726.15 “Buy American”.**

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by RUS complies with the “Buy American” provisions of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended by the North American Free Trade Agreement Implementation Act (107 Stat 2129). When a “Buy American” certificate is required by this part, this must be on RUS Form 213.

**§ 1726.16 Debarment and suspension.**

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

**§ 1726.17 Restrictions on lobbying.**

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

**§ 1726.18 Preloan contracting.**

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to

enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

**§ 1726.19 Use of competitive procurement.**

RUS borrowers’ procurement is not subject to the provisions of the Federal Acquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a RUS loan or loan guarantee is involved except:

- (a) As specifically provided for in subparts B through F of this part; or
- (b) A waiver is granted.

**§ 1726.20 Standards and specifications.**

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

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**§ 1726.21 New materials.**

The borrower shall purchase only new materials and equipment unless otherwise approved by RUS, on a case by case basis, prior to the purchase.

**§ 1726.22 Methods of construction.**

The borrower is generally responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. RUS reserves the right to require contract construction in lieu of force account construction on a case by case basis.